

**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS**

**CRANSTON, RITT**

**RHODE ISLAND TRAFFIC TRIBUNAL**

**STATE OF RHODE ISLAND**

:  
:  
:  
:  
:

v.

**C.A. No. T19-0019  
19510501248**

**ANDREW HOULIHAN**

**DECISION**

**PER CURIAM:** Before this Panel on November 27, 2019—Magistrate Kruse Weller (Chair), Associate Judge Almeida, and Associate Judge Parker—is Andrew Houlihan’s (Appellant) appeal from a decision of Administrative Magistrate Joseph A. Abbate (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-22-31, “Mobile telephone usage by motor vehicle operators.” Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

**I**

**Facts and Travel**

On June 25, 2019, Officer Jacob Maione (Officer Maione) of the University of Rhode Island Police Department observed the operator of a motor vehicle using a cellular phone while he was driving.<sup>1</sup> Tr. at 4:3-12, Sept. 17, 2019. Officer Maione conducted a motor vehicle stop

---

<sup>1</sup> In his findings of fact, the Trial Magistrate expressed concern that Officer Maione’s testimony lacked the time, date, and location of Appellant’s motor vehicle stop. Tr. at 9:21-25, Sept. 17, 2019. Accordingly, this Decision conveys that Appellant’s motor vehicle stop occurred on June 25, 2019, which is the violation date indicated on the Rhode Island Traffic Tribunal Judgment Card entered after Appellant’s trial. Furthermore, it is apparent that Appellant’s motor vehicle stop occurred within the jurisdiction of the of the University of Rhode Island Police Department, because Officer Maione testified that after the motor vehicle stop had concluded, Appellant exited the jurisdiction of the University of Rhode Island Police Department. *See id.* at 6:22-25.

and identified the driver of the vehicle as Appellant. *Id.* Officer Maione then issued Appellant a citation for the above-referenced violation. *Id.*; *see also* Summons No. 19510501248.

Appellant contested the charged violation, and the matter proceeded to trial on September 17, 2019. Tr. at 1, Sept. 17, 2019. Officer Maione testified first. *Id.* at 4:3-12. Officer Maione testified that Appellant passed his location in a motor vehicle while holding a cellular phone in his right hand and looking at the phone's screen. *Id.* at 4:4-5. Officer Maione testified that after stopping Appellant, he asked Appellant whether he was using the phone to conduct a call on speaker phone. *Id.* at 4:5-7. Officer Maione testified that Appellant responded by stating he was "FaceTiming."<sup>2</sup> Officer Maione further testified that Appellant displayed the FaceTime call on the phone's screen to him. *Id.* at 4:8-10.

Next, Appellant testified. *Id.* at 7:14. Appellant testified that he was using the phone hands-free. *Id.* at 7:19-20. Appellant testified that he entered the FaceTime call prior to leaving his house and entering his vehicle. *Id.* at 8:3-8. Appellant testified that he did not touch the phone while driving, but that the phone was in his lap and on speakerphone. *Id.* at 8:10-12.

After testimony concluded, the Trial Magistrate stated his findings of fact on the record. *Id.* at 8:24. Although the Trial Magistrate noted Officer Maione's testimony lacked relevant information, such as the time, date, and location of the motor vehicle stop, the Trial Magistrate nonetheless found the testimony of Officer Maione credible, and concluded that Appellant operated a motor vehicle while using a cellular phone in his hand. *Id.* at 9:21-10:9. As such, the Trial Magistrate found Appellant guilty of violating § 31-22-31. *Id.* at 10:10-21. Furthermore, after considering Appellant's driving record, which indicated five separate speeding violations

---

<sup>2</sup> FaceTime "is a video conferencing feature that allows iPhone users to communicate via video calls, as opposed to traditional audio calls." *Grace v. Apple, Inc.*, 328 F.R.D. 320, 327 (N.D.Cal. 2018).

between 2018 and 2019, the Trial Magistrate imposed a fine of \$100, in addition to chronic offender driver retraining and a loss of license for three months. *Id.* at 10:22-11:19.

Appellant subsequently filed a timely appeal of the Trial Magistrate's decision. *See* Appellant's Notice of Appeal at 1. Forthwith is this Panel's decision.

## II

### Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides, in relevant part:

“The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudiced because the judge's findings, inferences, conclusions or decisions are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the judge or magistrate;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate's decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mutual Insurance Company v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to

determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Environmental Science Corporation v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

### III

#### Analysis

On appeal, Appellant argues that the sanctions imposed by the Trial Magistrate were “[i]n violation of . . . statutory provisions.” Sec. 31-41.1-8(f)(1). Specifically, Appellant argues that the Trial Magistrate’s decision to impose a loss of license for three months and chronic offender driver retraining exceeded the sanctions that are permissible under § 31-22-31(c). Furthermore, Appellant argues that the Trial Magistrate misapplied § 31-27-24, known as the Colin Foote Statute, by considering dismissed violations when imposing sanctions at the conclusion of Appellant’s trial.

#### **A. Authority for Sanctions Imposed for Appellant’s Violation of § 31-22-31**

The text of § 31-22-31(c) authorizes a \$100 fine but is silent as to whether other types of sanctions are permitted. Therefore, the issue this Panel is tasked with deciding is whether the additional sanctions imposed by the Trial Magistrate on Appellant were lawful.

Section 31-41.1-6 governs the authority of a judge or magistrate of the Rhode Island Traffic Tribunal to impose different types of sanctions after sustaining a charged violation. Specifically, § 31-41.1-6(c) grants a judge or magistrate of this Tribunal the discretion to impose

penalties in addition to those enumerated in the statutory language of a charged violation. The pertinent language of § 31-41.1-6(c) states:

“A judge or magistrate may include in the order the imposition of *any penalty* authorized by *any provisions* of this title for the violation, including, but not limited to, *license suspension* and/or in the case of a motorist under the age of twenty (20), community service, except that no penalty for it shall include imprisonment.”

*Id.* (emphasis added).

The plain language set forth in § 31-41.1-6(c) makes clear that any penalty that is authorized by any provision of Title 31, which governs “Motor and Other Vehicles,” may be imposed upon the motorist by the trial judge or magistrate. Furthermore, this Tribunal has long held that the General Assembly intended to give a judge or magistrate of this Tribunal broad discretion in imposing a sanction for a violation of any offense in Title 31. *See Casey Rondeau*, C.A. No. T 12-0010, November 30, 2012, R.I. Traffic Trib.; *Zigmond Coffey*, C.A. No. T 12-0014, May 4, 2012, R.I. Traffic Trib.; *Town of South Kingstown v. Jon Lachapelle*, C.A. No. T 10-0045, September 30, 2010, R.I. Traffic Trib.; *see also* §§ 31-27-12.3(c)(3), 31-11-5. The statutory language cited above makes clear that the Trial Magistrate possessed the statutory authority to impose the three-month loss of license at the conclusion of Appellant’s trial. Furthermore, a driver’s license is not a right, but a privilege. *See 7A Am. Jur. 2d Automobiles* § 104 (2010) (discussing that “a license may be taken away or encumbered as a means of meeting a legitimate legislative goal, or when the interest of public safety or welfare is at stake”). As a result, the Trial Magistrate’s consideration of the public safety implications of Appellant’s numerous charged traffic violations that were incurred over a short period of time in deciding to

suspend Appellant's license was not in violation of statutory authority.<sup>3</sup> Accordingly, this Panel affirms once more that a judge or magistrate of this Tribunal possesses the discretion to impose a sanction for a violation of any offense in Title 31, which may include but is not limited to license suspension, requiring a motorist to attend training or educational classes, in addition to paying a fine enumerated in the statutory language of a charged violation.

### **B. Applicability of the Colin Foote Statute**

Additionally, Appellant contends that the Trial Magistrate misapplied the Colin Foote Statute by considering Appellant's dismissed violations. Appellant's reliance on the Colin Foote Statute is misplaced.

Section 31-27-24(a) of the Colin Foote Statute reads, in relevant part:

“Every person convicted of moving violations on four (4) separate and distinct occasions within an eighteen (18) month period may be fined up to one thousand dollars (\$1,000), and shall be ordered to attend sixty (60) hours of driver retraining, shall be ordered to perform sixty (60) hours of public community service, and the person's operator license in this state may be suspended up to one year or revoked by the court for a period of up to two (2) years.”

The Colin Foote Statute applies to multiple moving violations and contains the mandatory penalties of sixty hours of community service and sixty hours of driver retraining. *Id.* Section 31-27-24(c) of the statute specifically enumerates eleven offenses which trigger the imposition of the enhanced penalties. They are:

- “(1) 31-13-4. Obedience to devices.
- “(2) 31-14-1. Reasonable and prudent speeds.
- “(3) 31-14-2. Prima facie limits.
- “(4) 31-14-3. Conditions requiring reduced speeds.
- “(5) 31-15-5. Overtaking on the right.

---

<sup>3</sup> Additionally, for the same reasons as those aforementioned, the Trial Magistrate also possessed the authority to order Appellant to complete chronic offender driver retraining. *See* § 31-41.1.-6(c) (stating that “[a] judge or magistrate may include in the order the imposition of *any penalty* authorized by any provisions of this title”) (emphasis added).

- “(6) 31-15-11. Laned roadways.
- “(7) 31-15-12. Interval between vehicles.
- “(8) 31-15-16. Use of emergency break-down lane for travel.
- “(9) 31-17-4. Vehicle entering stop or yield intersection.
- “(10) 31-20-9. Obedience to stop signs.
- “(11) 31-27.1-3. ‘Aggressive driving’ defined.”

In the instant matter, it is clear that the Trial Magistrate did not apply the Colin Foote Statute in imposing sanctions at the conclusion of Appellant’s trial. First, the Trial Magistrate did not make a finding that Appellant posed a substantial traffic safety hazard as required by the statute. In addition, Appellant did not receive the mandatory sentence of sixty hours of community service or sixty hours of mandatory driver retraining, nor did the Trial Magistrate impose any enhanced penalties. Furthermore, there is no designation on the judgment sheet memorializing the court’s decision and the imposition of sanctions that Appellant had been designated a Colin Foote offender. As a result, Appellant’s contention that the Trial Magistrate erroneously considered dismissed violations when imposing sanctions pursuant to the Colin Foote Statute is without merit.

## IV

### Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision to impose sanctions was not "[i]n violation of . . . statutory provisions." Sec. 31-41.1-8(f)(1). The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

---

Magistrate Erika Kruse Weller (Chair)

---

Associate Judge Lillian M. Almeida

---

Associate Judge Edward C. Parker

DATE: \_\_\_\_\_